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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,203	12/03/2003	Nancy L. Klodt	P06446US00	5137
22885	7590	11/21/2005	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			SUHOL, DMITRY	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/727,203	KLODT, NANCY L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dmitry Suhol	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haupt '620 in view of McAllister '153. Haupt discloses an educational device containing most of the claimed elements including, with respect to claims 1, 8 and 13, a teaching aid body (1) having a top surface and opposite bottom surface (figure 2), the body defining a frame around an aperture (2) in the body (figures 1 and 2), educational information represented on the top surface of the body (figure 1), a replaceable name tag (3) positioned within the aperture of the body/replaceable name tag region (figures 1 and 2). The educational material being reading material, as required by claim 3, is shown in figure 1 as the word "pig". Decorative matching designs being on name tag (3) and the top surface of the body (1), as required by claims 4, 9 and 14-16, are shown in figure 1 with the words "pig" and pig design as well (where it is considered that as broadly claimed by the applicants a "pig" is the design element associated with a school, for instance a mascot). The name tag including educational material, as required by claims 5-6 and 8, is also shown in figure 1, as the word "pig". The educational material being located in a plurality of regions of the body, as required by

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claim 7, is shown in figure 1, where it can be seen that the word "pig" is at the top region of the body while the pig design is in the center region.

Haupt lacks the teaching of a bottom surface comprising a magnetic material as required by claims 1, 8 and 13. However, McAllister discloses an educational device, like that of Haupt, which teaches that it is known to provide such devices with a magnetic bottom surface for the purpose of attaching such a device to a metallic article (col. 1, lines 58-67). Therefore it would have been obvious to one having ordinary skill in the art at the time of the claimed invention to having manufacture the bottom surface of Haupt from a magnetic material for the purpose of attaching the device to a metallic surface.

Regarding a sleeve being attached to the bottom surface of the body, as required by claim 2, it would have been obvious to manufacture the device of Haupt with a sleeve portion attached to the bottom surface of the body instead of the back wall portion since the examiner takes official notice that such construction to hold one item in a body portion is well known in the art. Furthermore, it is considered that the attachment means for the name tag being a sleeve is an obvious choice of design as applicants clearly state that the name tag may be attached to the device in a variety of known ways (see applicants specification page 4, lines 29-30).

Furthermore, regarding the specific information carried by the body and the name tag, as required by claims 1, 3-9, 13-16, it would have been obvious to one having ordinary skill in the art at the time of the claimed invention to provide the teaching aid with any of the claimed indicia since it would only depend on the intended use of the

assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack* 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of display/educational information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter (e.g. educational and design indicia/information) and the substrate (e.g. name tag and device body) which is required for patentability. Furthermore it is the position of the examiner that the decorative design and placement of the educational material as claimed is purely a design choice in that applicants do not disclose any advantage or critical need for the decorative design or the placement of the educational material (see applicants specification page 4, lines 28-31).

Claims 1-2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grate '107 in view of Duguay '387 and McIntosh '296. Grate discloses a display device containing most of the claimed elements including, with reference to claim 1, a body having a top and bottom surface and defining a frame around an aperture (figure 1), a replaceable name tag (37 where it is considered that as broadly claimed member 37 is a name tag since it bears the name of a food item which is also considered to be

educational information as required by claim 6) positioned within the aperture of the body (figure 7).

Grate lacks the teaching of a magnetic material on the bottom surface of the body as required by claim 1 and educational information represented on the top surface of the body as required by claim 1. However, Duguay discloses a display device like that of Grate which teaches that it is known to provide such device with educational information on the top surface thereof (figure 6) for the purpose of displaying to the user the topics displayed by the device, while McIntosh teaches that it is known to provide display devices with a bottom surface comprising a magnetic material for the purpose of support. Therefore it would have been obvious to incorporate educational information on the top surface of the body, in view of Duguay, for the purpose of displaying to the user the topics displayed by the device and to include magnetic material with the bottom surface of the body for the purpose of supporting the device so that users may view the information displayed thereon.

Furthermore, regarding the specific information carried by the body and the name tag, as required by claims 1 and 6, it would have been obvious to one having ordinary skill in the art at the time of the claimed invention to provide the teaching aid with any of the claimed indicia since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack* 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may

render the device more convenient by providing an individual with a specific type of display/educational information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter (e.g. educational and design indicia/information) and the substrate (e.g. name tag and device body) which is required for patentability. Furthermore it is the position of the examiner that the decorative design and placement of the educational material as claimed is purely a design choice in that applicants do not disclose any advantage or critical need for the decorative design or the placement of the educational material (see applicants specification page 4, lines 28-31).

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haupt '620 and McAllister '153, as stated above, and further in view of Miller '902. Haupt, as modified by McAllister, fails to explicitly teach a second replaceable name tag region as required by claim 10, the replaceable name tag region including a sleeve as required by claim 11 and a first and second sleeves for holding replaceable name tags as required by claim 12. However, Miller discloses a teaching aid like that of Haupt and McAllister which teaches that it is known to provide such aids with one or more sleeves/replaceable tag regions for holding tags (32) which match educational material on the body of the aid (figures 1, 4 and 6). Therefore it would have been obvious to manufacture the device of Haupt, as modified by McAllister, with one or more replaceable name tag regions/sleeves for the purpose providing a teaching aid with

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increasing complexity, especially since Haupt clearly states that multiple teaching topics are encompassed in his invention (lines 61-67).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-16 and associated prior art have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicants arguments regarding *In re Gulack*, 217 USPQ 401, (CAFC 1983), the examiner maintains his position that the substrate and the indicia thereon lack an unobvious functional relationship as required for patentability. For example, in *In re Gulack* there was an unobvious functional relationship between the indicia carried by the band and the band itself since the indicia would be rendered meaningless without the continuous loop structure of the band. Another example of an unobvious relationship between a substrate and indicia is *In re Miller*, 164 USPQ 46 (CCPA 1969), here the measurement markings would also lack the desired functionality/be rendered meaningless if not placed upon measuring cup substrate.

However in this case, the name tag, body portion and related educational indicia do not share such a relationship, in other words, applicants educational material could be carried by a different structure and still maintain it's functionality regardless of whether it is carried by a name tag and respective body portion or a black board, a piece of paper, a computer screen or some other substrate. Therefore there is no unobvious relationship between the substrate and indicia carried thereon.



Regarding applicants arguments with respect to criticality for a specific decorative design, the examiner maintains his position that the specific decorative designs are nothing more than a design choice as stated above and supported in applicants specification at page 4, lines 28-31.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dmitry Suhol  
Examiner  
Art Unit 3725

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